



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 111<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 156

WASHINGTON, TUESDAY, JULY 13, 2010

No. 103

## Senate

The Senate met at 10 a.m. and was called to order by the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Merciful God, sustainer of our lives, provide for all the needs of our lawmakers. Give them strength for struggles and successes, for shadows and sunshine, for valleys and mountain summits. Awaken in all of us a fresh appreciation for this great land, inspiring us to keep alive a real sense of freedom.

Lord, thank You for our Nation's Founders, for their ideals and principles. We are grateful also for the long line of patriots who have kept freedom's flame burning brightly. As American citizens, give us a love for righteousness so that, receiving Your grace, we may bless the world for the praise of Your glory.

We pray in Your sacred Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JEANNE SHAHEEN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUE).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 13, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable JEANNE SHAHEEN, a Senator from the State of New Hampshire, to perform the duties of the Chair.

DANIEL K. INOUE,  
President pro tempore.

Mrs. SHAHEEN thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Madam President, following leader remarks, the Senate will proceed to a period of morning business. Senators will be allowed to speak for up to 10 minutes each. That will be until 12:30 today.

### ORDER OF PROCEDURE

I ask unanimous consent that the Republicans control the first 30 minutes and the majority control the next 30 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Madam President, today I hope we can return to the small business jobs bill. I am confident amendments should already have been exchanged. We are in a difficult situation. It is a tax bill. We can go back and look through many Congresses in the past. Whenever we get close to an election, there is a tax bill on the floor, so we have to be very careful how the amendment process works. I hope we can move forward in good faith, have amendments offered by each side. I have had calls from two Republican Senators wanting to move forward on this bill. I hope we can do that. The fact that the so-called tree is filled should not bar any constructive consideration of this legislation. There is no effort being made to stop amendments,

other than amendments that will get us into areas we need not get into. This is a bill to promote jobs through small business, where most jobs are created. I hope we can do that. I also expect to consider the Wall Street reform conference report sometime later in the day.

### ORDER FOR PRINTING OF SENATE PRAYER

Mr. REID. Madam President, I ask unanimous consent that the prayer delivered by our Senate Chaplain on Thursday, July 1, when the Senate gathered to remember Senator Robert C. Byrd, be printed in the RECORD and as a part of the memorial book of Senate tributes.

There being no objection, the prayer was ordered to be printed in the RECORD, as follows:

### PRAYER FOR SENATOR ROBERT C. BYRD

(By Dr. Barry C. Black, Thursday, July 1, 2010)

Let us pray.

God our refuge and strength, close at hand in distress and giver of all comforts, we thank You for giving us the gift of Senator Robert Carlyle Byrd. Lord, we appreciate his wit and wisdom, his stories and music, as well as his indefatigable commitment to the principles of freedom that make America great. Thank You for blessing us with his passion for history and his willingness to challenge conventional wisdom in his quest to keep our Nation strong. Deal graciously with all who mourn, that, casting every care on You, we may know the consolation of Your love.

Lord, comfort Mona and Marjorie and all of Senator Byrd's loved ones, dispelling their fears with Your love, easing their loneliness with Your presence, and renewing their hopes with Your promises.

In Your mercy turn the darkness of death into the dawn of new life, and the sorrow of parting into the joy of heaven.

We pray in Your Holy Name. Amen.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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The legislative clerk proceeded to call the roll.

Mr. BARRASSO. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. BARRASSO. I ask unanimous consent to speak for up to 30 minutes in a colloquy with a number of colleagues.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### APPOINTMENT OF DR. DONALD BERWICK

Mr. BARRASSO. Madam President, I rise to discuss a recess appointment made last week when many of us were traveling to visit with constituents to talk about the issues of the day.

During that time, I was in Wyoming, and one of the main issues brought up at senior centers was the appointment by the President of Dr. Donald Berwick to be the head of Medicare and Medicaid. I heard the concerns of these folks because of statements Dr. Berwick had made about the British health care system and his love of the National Health Service in England. They are concerned as to how this gentleman, who has taken positions and made a number of statements, would run Medicare and Medicaid. Specifically, they had concerns because they had heard his statement:

The decision is not whether or not we will ration. The decision is whether we will ration with our eyes open.

Seniors around the State were concerned about what this means. Then to hear that the President made a decision to do a recess appointment of this very individual, without hearings in the Congress, without an opportunity for the American people to hear specifically his response to questions we might have—is this what the American people want? Absolutely not. We have a President who campaigned on a pledge of accountability and transparency. To me, this makes a mockery of that pledge because this nominee will not have to answer questions about statements he has made.

I see my colleague from Arizona, a State where people on Medicare are concerned, where we have many seniors, a State with a Medicaid popu-

lation that will be impacted. Yet we now have a director of Medicaid and Medicare, finally named by the President after a full year of debate on a health care law that cut \$500 billion from seniors on Medicare and crammed 16 million more Americans onto Medicaid, a program that is currently very broken. I say to my colleague from Arizona, my goodness, the impact on the folks in Arizona is astonishing.

There was an article today in one of the papers that talks about a Medicaid stalemate. They talk about his home State of Arizona. They say Arizona has had to cut about a dozen benefits from its Medicaid Program, including hearing aids, podiatrist services, capped physical therapy visits. Yet there was nobody in charge of Medicaid when the President and the Democrats in this body said: Hey, don't worry. We are going the cram another 16 million more Americans onto Medicaid—a system we know is broken.

So I turn to my colleague from Arizona and ask him his thoughts on this recess appointment at a time when seniors and folks around the country are concerned about the debt, the deficit, the economy, and now we are seeing the President making a mockery of his previous comments about accountability and transparency.

Mr. MCCAIN. Could I say to my friend, I think this issue is an alarming and disturbing one—perhaps one of the most disturbing, for two reasons: One is that this nomination had not even gone through the earliest stages of scrutiny by the relevant committee, not to mention the entire Senate; and the other, of course, is the individual himself who was being nominated, who could only be viewed as extreme, especially concerning many of his comments. One of his greatest rhetorical hits is: “any health-care funding plan that is just, equitable, civilized and humane must—must—redistribute wealth from the richer among us to the poorer and less fortunate.” That in itself is a remarkable statement.

But I wish to, for a second, with my friend, Dr. BARRASSO, go back to this process. The fact is, our colleagues on the other side of the aisle blocked for over 2 years the nomination for this position by President Bush, and this nomination was barely 3 months old. He had not even filled out the questionnaire, much less attend a hearing. So the rationale used by the administration was: Well, the Republicans are going to block it. Well, we may have. And given the comments and record of Sir Donald—he is a knight, I understand, knighted by Queen Elizabeth—well, the comments by Sir Donald certainly do give one extreme pause. But shouldn't we at least go through the process of the hearing?

I have been around here a long time, and I have not paid attention to every nominee and the process they have been through, but I cannot remember a time where blocking the nomination took place—or announcement of pre-

venting the nomination from moving forward was done before a hearing took place, or even the questionnaire.

In fact, I was very interested to see the comment of the chairman of the Finance Committee, under whose supervision in his committee this nomination would go through. I quote Senator BAUCUS:

I'm troubled that, rather than going through the standard nomination process, Dr. Berwick was recess appointed. Senate confirmation of presidential appointees is an essential process prescribed by the Constitution that serves as a check on executive power and protects Montanans and all Americans by ensuring that crucial questions are asked of the nominee—and answered.

So not a single question was asked of the nominee, much less answered. And, of course, I understand. Having been a committee chairman myself, I will take great umbrage of my party, the President, or the other party that the process was completely bypassed. Because the Senate has the responsibility of advice and consent. And over time, I must admit that both Republican and Democrat administrations have abused the recess appointment process. Yes, they have abused it. But I must say, this takes it to a new high or low depending on which way you view it.

We have now seen in this administration the appointment of various “czars,” people given responsibilities over vast areas of government as “czars.” They have got more czars than the Romanoffs. So this is another step, in my view, of incursion and encroachment by the executive branch on the legislative branch, a coequal branch of government. So that in itself is extremely disturbing.

Are we going to have nominations made—an announcement of those nominations, and then automatically are we going to have “recess” appointments made? What was the hurry? There is going to be another recess in August. There is going to be another recess in October, unless we go out for elections. But yet in their zeal and haste, they had to do it over the Fourth of July recess.

I tell you, my friends, this is more than just one individual. This is a gradual and steady erosion of the responsibilities of the Senate of the United States called advice and consent, which can set dangerous precedence for the future. I say to this administration, and my friends on the other side of the aisle—and I appreciate the comments of the chairman of the Finance Committee—if we allow this to go on, it will hurt the Senate as an institution, not just Republicans, not just Democrats, but it will hurt this institution, if we allow, unresponded to, a situation where a nominee—his name comes over, and not even a hearing, not even a question is asked—and immediately that nominee is recess appointed, which means they are in a position of enormous power and authority for a long period of time. And this appointment—this appointment—has enormous consequences in light of the passage of the most sweeping overhaul of